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FEB 03 2009

**OFFICE OF PETITIONS**

In re Application of :  
Harris et al. : LETTER REGARDING  
Application No. 10/717,217 : PATENT TERM ADJUSTMENT  
Filed: November 18, 2003 :  
Attorney Docket No. :  
1000141-00155 / 1412E :

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT AT ALLOWANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE," filed on December 12, 2008. Applicants request, pursuant to their duty of good faith and candor, that the initial determination of patent term adjustment under 35 USC 154(b) be reviewed for accuracy.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 493 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 30, 2008,<sup>1</sup> the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is five hundred thirty-two (532) days. The instant request for review of patent term adjustment was timely filed.<sup>2</sup>

Applicants state that the PTA calculation appears to be longer than appropriate. Applicants state, specifically, that the PTA calculation should be reviewed with respect to the Notice to

<sup>1</sup> The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was remailed on December 12, 2008, again stating that the patent term adjustment to date was 532 days.

<sup>2</sup> PALM Records indicate that the issue fee was paid on December 24, 2008.

File Missing Parts mailed on March 3, 2004, and the reply thereto filed on July 12, 2004.

A review of the record reveals that Applicants should have been assessed an additional delay of 39 days. On March 3, 2004, the Notice to File Missing Parts was mailed. On July 12, 2004, a reply to the Notice to File Missing Parts was filed, with a certificate of mailing date of July 8, 2004, three (3) months and 39 days after the mailing of the Notice to File Missing Parts.

37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

37 CFR 1.703(f) states, in pertinent part that:

The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

Therefore, Applicants should have been assessed a reduction in patent term adjustment for the period of delay beginning on June 4, 2004, (the day after the day three (3) months from the date that the Notice to File

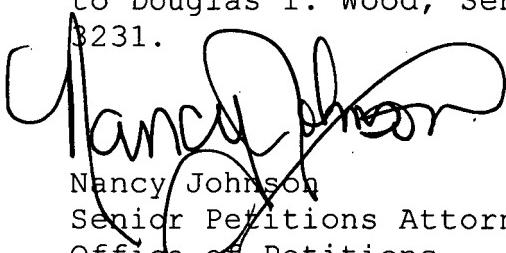
Missing Parts was mailed on March 3, 2004, to July 12, 2004 (the date the reply was filed), or 39 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is four hundred ninety-three (493) days (717 days of Office delay, reduced by 224 (185+39) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

  
Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Encl: Revised PALM Calculation


**PALM INTRANET**

 Day : Monday  
 Date: 2/2/2009  
 Time: 20:16:52

**PTA Calculations for Application: 10/717217**

Application Filing Date:	<b>11/18/2003</b>	PTO Delay (PTO):	<b>717</b>
Issue Date of Patent:		Three Years:	<b>0</b>
Pre-Issue Petitions:	<b>0</b>	Applicant Delay (APPL):	<b>185</b>
Post-Issue Petitions:	<b>0</b>	Total PTA (days):	<b>493</b>
PTO Delay Adjustment:	<b>-39</b>		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
106	02/02/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		39	
90	12/12/2008	MAIL NOTICE OF ALLOWANCE			
89	12/11/2008	ISSUE REVISION COMPLETED			
88	12/11/2008	DOCUMENT VERIFICATION			
87	12/11/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
85	12/08/2008	NOTICE OF ALLOWABILITY			
84	12/04/2008	DATE FORWARDED TO EXAMINER			
83	10/06/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
82	12/04/2008	DATE FORWARDED TO EXAMINER			
81	10/06/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
80	12/04/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
79	10/30/2008	MAIL EXAMINER'S AMENDMENT			
78	10/30/2008	MAIL CORRECTED NOTICE OF ALLOWANCE (RESPONSE PERIOD NOT RESTARTED)			
77	10/28/2008	EXAMINER'S AMENDMENT COMMUNICATION			
76	10/28/2008	ISSUE REVISION COMPLETED			
75	10/28/2008	DOCUMENT VERIFICATION			
74	10/28/2008	CORRECTED NOTICE OF ALLOWANCE			
73	10/06/2008	EXPORT TO INITIAL DATA CAPTURE			
72	10/02/2008	MAIL EXAMINER'S AMENDMENT			
71	10/02/2008	MAIL NOTICE OF ALLOWANCE			
70	09/29/2008	ISSUE REVISION COMPLETED			
69	09/29/2008	DOCUMENT VERIFICATION			
68	09/26/2008	NOTICE OF ALLOWANCE DATA VERIFICATION			

		COMPLETED		
67	09/26/2008	EXAMINER'S AMENDMENT COMMUNICATION		
66	09/26/2008	NOTICE OF ALLOWABILITY		
65	09/02/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
64	09/02/2008	REFERENCE CAPTURE ON IDS		
63	09/02/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
62	09/15/2008	DATE FORWARDED TO EXAMINER		
61	09/02/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE		
60	09/15/2008	DATE FORWARDED TO EXAMINER		
59	09/02/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)	3	51
58	09/15/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)		
57	09/02/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
56	09/02/2008	WORKFLOW - REQUEST FOR RCE - BEGIN		
55	08/08/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)		
54	08/08/2008	CORRESPONDENCE ADDRESS CHANGE		
53	06/12/2008	FINISHED INITIAL DATA CAPTURE		
52	06/02/2008	EXPORT TO INITIAL DATA CAPTURE		
51	05/30/2008	MAIL NOTICE OF ALLOWANCE		
50	05/15/2008	ISSUE REVISION COMPLETED		
49	05/15/2008	DOCUMENT VERIFICATION		
48	05/15/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED		
47	05/15/2008	CASE DOCKETED TO EXAMINER IN GAU		
46	05/12/2008	NOTICE OF ALLOWABILITY		
45	05/06/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED		
44	05/06/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
43	05/08/2008	DATE FORWARDED TO EXAMINER		
42	05/06/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		
41	05/08/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)		

40	05/06/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	05/06/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	05/06/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	04/28/2008	EXPORT TO INITIAL DATA CAPTURE			
36	04/25/2008	MAIL NOTICE OF ALLOWANCE			
35	04/24/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
34	04/09/2008	ISSUE REVISION COMPLETED			
33	04/09/2008	DOCUMENT VERIFICATION			
32	03/31/2008	NOTICE OF ALLOWABILITY			
31	03/31/2008	DATE FORWARDED TO EXAMINER			
30	03/21/2008	RESPONSE AFTER NON-FINAL ACTION		91	27
29	03/21/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	09/21/2007	MAIL NON-FINAL REJECTION			
26	09/17/2007	NON-FINAL REJECTION			
25	07/07/2007	DATE FORWARDED TO EXAMINER			
24	07/05/2007	RESPONSE TO ELECTION / RESTRICTION FILED		91	22
23	07/05/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	01/05/2007	MAIL RESTRICTION REQUIREMENT	717		-1
21	01/03/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
20	07/26/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
19	06/16/2006	CASE DOCKETED TO EXAMINER IN GAU			
18	06/06/2006	CASE DOCKETED TO EXAMINER IN GAU			
17	07/26/2004	REFERENCE CAPTURE ON IDS			
16	08/16/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15.7	07/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	03/24/2004	PRELIMINARY AMENDMENT			
13	08/16/2004	CASE DOCKETED TO EXAMINER IN GAU			
12	08/07/2004	APPLICATION RETURN FROM OIPE			
11	08/07/2004	APPLICATION RETURN TO OIPE			
10	08/06/2004	APPLICATION DISPATCHED FROM OIPE			

9	08/09/2004	APPLICATION IS NOW COMPLETE			
8	07/12/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEEXAM			
7	07/12/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	02/18/2004	CLEARED BY L&R (LARS)			
4	02/03/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	02/03/2004	CASE CLASSIFIED BY OIPE			
2	12/25/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/18/2003	INITIAL EXAM TEAM NN			

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#### **EXPLANATION OF PTA CALCULATION**

#### **EXPLANATION OF PTE CALCULATION**

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